



E-Filed on 8/8/07

1 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, NV 89169-5996  
 2 Facsimile (702) 949-8321  
 Telephone (702) 949-8320

3 Susan M. Freeman AZ State Bar No. 004199  
 Email: [sfreeman@lrlaw.com](mailto:sfreeman@lrlaw.com)  
 4 Rob Charles NV State Bar No. 006593  
 Email: [rcharles@lrlaw.com](mailto:rcharles@lrlaw.com)

5 Attorneys for USACM Liquidating Trust

6 STUTMAN, TREISTER & GLATT, P.C.  
 FRANK A. MEROLA  
 (CA State Bar No. 136934)  
 7 EVE H. KARASIK  
 (CA State Bar No. 155356)  
 CHRISTINE M. PAJAK  
 (CA State Bar No. 217173), Members of  
 8 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
 Los Angeles, California 90067  
 Telephone: (310) 228-5600  
 Facsimile: (310) 228-5788  
 9 Email: [fmerola@stutman.com](mailto:fmerola@stutman.com)  
[ekarasik@stutman.com](mailto:ekarasik@stutman.com)  
[cpajak@stutman.com](mailto:cpajak@stutman.com)

10 11 12 Counsel for the Official Committee Of  
 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

13 **UNITED STATES BANKRUPTCY COURT**  
 14 **DISTRICT OF NEVADA**

15 In re:

16 USA COMMERCIAL MORTGAGE COMPANY,  
 17 USA CAPITAL REALTY ADVISORS, LLC,  
 18 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 LLC,  
 19 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 20 USA SECURITIES, LLC,

21 Debtors.

22 **Affects:**

23  All Debtors  
 USA Commercial Mortgage Company  
 24  USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
 USA Capital First Trust Deed Fund, LLC  
 USA Securities, LLC

Case No. BK-S-06-10725-LBR  
 Case No. BK-S-06-10726-LBR  
 Case No. BK-S-06-10727-LBR  
 Case No. BK-S-06-10728-LBR  
 Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Objection of USACM Trust To Caroline Gerwin  
 Claim Filed in Wrong Debtor's Case; Objection  
 of FTDF to Proposed Allowance of Claim**

Hearing Date: October 15, 2007  
 Hearing Time: 9:30 a.m.

1       Caroline Gerwin filed Proof of Claim No. 10725-00390 against USA Commercial  
 2 Mortgage Company in the amount of \$25,000.00. The USACM Liquidating Trust (the  
 3 "USACM Trust") hereby objects to Ms. Gerwin's claim. The basis for the claim is shown  
 4 on its face and in the attachment as an investment in USA Capital First Trust Deed Fund,  
 5 LLC ("FTDF"). Accordingly, it is a claim that was incorrectly filed in the USA  
 6 Commercial Mortgage Company ("USACM") case. The USACM Trust respectfully  
 7 requests that this claim be disallowed as a claim against USACM. Any claim held by Ms.  
 8 Gerwin against USACM solely on account of her investment in FTDF is derivative of  
 9 FTDF's claims against USACM. Under a settlement approved by the Court on June 12,  
 10 2007, all such FTDF claims were settled, with FTDF holding a \$7.0 million allowed  
 11 general unsecured claim and beneficial interest in the USACM Liquidating Trust. The  
 12 equity interest holders in FTDF will share in any recovery on account of that claim.

13       The Official Committee of Equity Security Holders of FTDF ("FTDF Committee")  
 14 further objects to any proposed allowance of Ms. Gerwin's claim as a claim against the  
 15 FTDF estate.

16       Bankruptcy Code section 502 authorizes a party in interest to object to claims. See  
 17 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall  
 18 determine the amount of such claim in lawful currency of the United States as of the date  
 19 of the filing of the petition . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is  
 20 presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the  
 21 presumption, the creditor has the ultimate burden of persuasion as to the validity and  
 22 amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer  
Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996)  
 23 (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

24       The FTDF Committee has analyzed the Gerwin claim and has determined that it  
 25 has been incorrectly designated as a "proof of claim." Pursuant to Bankruptcy Code

1 section 502, a "creditor . . . may file a proof of claim." An equity security interest holder,  
 2 however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code  
 3 section 101(16) defines "equity security" to include a "share in a corporation, whether or  
 4 not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to  
 5 purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11  
 6 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of  
 7 a limited liability company, a limited liability company must pay liabilities to creditors  
 8 before paying liabilities in respect of profits and/or capital to members of the limited  
 9 liability company).

10 The Gerwin claim clearly reflects that it is based on its membership in the FTDF  
 11 and not based on any debt the claimants hold against the FTDF. For example, annexed to  
 12 the Gerwin claim are account statements that list the number of shares Ms. Gerwin holds  
 13 in the FTDF, the price of such shares, and the FTDF Member's account identification  
 14 number. Membership interests and/or shares in the FTDF clearly fall within the definition  
 15 of "equity security" under Bankruptcy Code section 101(16). Thus, the holders of the  
 16 equity interests are equity security interest holders of the FTDF and do not hold unsecured  
 17 claims against the FTDF estate.

18 This objection does not seek to prejudice the rights of Ms. Gerwin as an FTDF  
 19 member to recover from the FTDF estate on account of her membership interest of  
 20 \$25,000 which is the amount asserted in the Gerwin claim. Ms. Gerwin shall retain her  
 21 interest in FTDF in the amount of \$25,000 as reflected in the books and records of FTDF.  
 22 Indeed, Ms. Gerwin has received distributions based on this FTDF membership interest to  
 23 date, with no objection.

24 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order  
 25 that will disallow the Gerwin claim against USACM, disallow any proposed allowance of  
 26 the Gerwin claim in the FTDF case, and appropriately allow Ms. Gerwin to retain her



1 equity interest in the FTDF in the amount of \$25,000 as reflected in the books and records  
 2 of FTDF as of the bankruptcy petition filing date.

3 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of  
 4 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

5 Dated: August 8, 2007

6  
 7 By: /s/ Eve H. Karasik  
 FRANK A. MEROLA (CA State Bar  
 8 No. 136934),  
 9 EVE H. KARASIK (CA State Bar  
 No. 155356), and  
 10 CHRISTINE M. PAJAK (CA State Bar  
 No. 217173), Members of  
 11 STUTMAN, TREISTER & GLATT, P.C.  
 12 1901 Avenue of the Stars, 12th Floor  
 Los Angeles, CA 90067  
 13 Telephone: (310) 228-5600

14 and

15 CANDACE C. CARLYON  
 16 Shea & Carlyon, Ltd.  
 17 701 Bridger, Suite 850  
 Las Vegas, NV 89101  
 18 Telephone: (702) 471-7432  
 19 COUNSEL FOR THE  
 20 OFFICIAL COMMITTEE OF EQUITY  
 SECURITY HOLDERS  
 21 OF USA CAPITAL FIRST TRUST DEED  
 FUND, LLC

22  
 23 By: /s/ Rob Charles (#006593)  
 SUSAN M. FREEMAN  
 24 ROB CHARLES  
 LEWIS AND ROCA LLP  
 25 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, NV 89169-0961  
 Facsimile (702) 949-8321  
 Telephone (702) 949-8320  
 26 COUNSEL FOR USACM Liquidating  
 Trust



1 Copy of the foregoing  
2 Mailed this 8th day of  
3 August, 2007 to:

4 Caroline Gerwin  
5 4775 Summit Ridge Dr., Apt. 1101  
6 Reno, NV 89523-7917

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

By /s/ Renee L. Creswell